
SUBSTITUTE SENATE BILL 5413

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Rasmussen, McCaslin, Weinstein, Esser, Swecker, Shin, Haugen, Sheldon, Hargrove, Rockefeller and Regala)

READ FIRST TIME 03/02/05.

1 AN ACT Relating to actions against health care providers under
2 chapter 7.70 RCW; and amending RCW 7.70.100.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 7.70.100 and 1993 c 492 s 419 are each amended to read
5 as follows:

6 (1) No action based upon a health care provider's professional
7 negligence may be commenced unless the defendant has been given at
8 least ninety days' notice of the intention to commence the action. If
9 the notice is served within ninety days of the expiration of the
10 applicable statute of limitations, the time for the commencement of the
11 action must be extended ninety days from the service of the notice.

12 (2) The provisions of subsection (1) of this section are not
13 applicable with respect to any defendant whose name is unknown to the
14 plaintiff at the time of filing the complaint and who is identified
15 therein by a fictitious name.

16 (3) After the filing of the ninety-day presuit notice, and before
17 a superior court trial, all causes of action, whether based in tort,
18 contract, or otherwise, for damages arising from injury occurring as a

1 result of health care provided after July 1, 1993, shall be subject to
2 mandatory mediation prior to trial except as provided in subsection (6)
3 of this section.

4 ~~((+2))~~ (4) The supreme court shall by rule adopt procedures to
5 implement mandatory mediation of actions under this chapter. The
6 ~~((rules shall))~~ implementation contemplates the adoption of rules by
7 the supreme court which will require mandatory mediation without
8 exception unless subsection (6) of this section applies. The rules on
9 mandatory mediation shall address, at a minimum:

10 (a) Procedures for the appointment of, and qualifications of,
11 mediators. A mediator shall have experience or expertise related to
12 actions arising from injury occurring as a result of health care, and
13 be a member of the state bar association who has been admitted to the
14 bar for a minimum of five years or who is a retired judge. The parties
15 may stipulate to a nonlawyer mediator. The court may prescribe
16 additional qualifications of mediators;

17 (b) Appropriate limits on the amount or manner of compensation of
18 mediators;

19 (c) The number of days following the filing of a claim under this
20 chapter within which a mediator must be selected;

21 (d) The method by which a mediator is selected. The rule shall
22 provide for designation of a mediator by the superior court if the
23 parties are unable to agree upon a mediator;

24 (e) The number of days following the selection of a mediator within
25 which a mediation conference must be held;

26 (f) A means by which mediation of an action under this chapter may
27 be waived by a mediator who has determined that the claim is not
28 appropriate for mediation; and

29 (g) Any other matters deemed necessary by the court.

30 ~~((+3))~~ (5) Mediators shall not impose discovery schedules upon the
31 parties.

32 (6) The mandatory mediation requirement of subsection (4) of this
33 section does not apply to an action subject to mandatory arbitration
34 under chapter 7.06 RCW or to an action in which the parties have
35 agreed, subsequent to the arisal of the claim, to submit the claim to
36 arbitration under chapter 7.04 RCW.

37 (7) The implementation also contemplates the adoption of a rule by

1 the supreme court for procedures for the parties to certify to the
2 court the manner of mediation used by the parties to comply with this
3 section.

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